IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

OP.No. 3017 of 2003(H)
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PETITIONER:
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1. SATHYADASAN, S/O.RAMAKRISHNAN,
SINDHU VIHAR, VAKKOM (P.O.),
VAKKOM.

2. PURUSHOTHAMAN, S/O.VASU,
PADINJARATHIL VEEDU, VAKKOM.

BY ADV. SRI.T.H.ABDUL AZEEZ
SRI.M.CHANDRAN

RESPONDENTS:
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1. VAKKOM GRAMA PANCHAYAT, REPRESENTED
BY IT'S SECRETARY, VAKKOM P.O.,
TRIVANDRUM DIST.

2. ASST.EXECUTIVE ENGINEER, P.W.D.,
BUILDING SECTION ATTINGAL, TRIVANDRUM
DISTRICT.

3. SECRETARY TO GOVERNMENT OF KERALA,
LOCAL SELF GOVERNMENT DEPARTMENT.

4. BLOCK DEVELOPMENT OFFICER,
OFFICE OF THE B.D.O., CHIRAYINKEEZHU,
TRIVANDRUM DISTRICT.

ADDL. RESPONDENTS:

5. STATE OF KERALA, REP. BY CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.

6. SUPERINTENDING ENGINEER, SOUTHERN CIRCLE,
ROADS AND BRIDGES, P.W.D., TRIVANDRUM.

(ADDL. RESPONDENTS 5&6 ARE IMPLEADED AS PER
ORDER DT.3.12.2004 IN I.A. BI,16527/2004.)

R1 BY ADV. SRI.P.J.MATHEW
R2 TO 6 BY GOVERNMENT PLEADER SMT.R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.5417/2003 & I.A. NO.16526/2004 IN O.P. NO.3017/2003

DISMISSED:

30.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONERS' EXHIBITS:

P1: PHOTOCOPY OF THE AGREEMENT NO.37/99-2000 DT.13.3.2000 WITH R1.

P2: PHOTOCOPY OF REVISED ESTIMATE DT.18.4.2000 BEFORE R1.

P3: PHOTOCOPY OF REPRESENTATION SUBMITTED BY COMMITTEE MEMBERS BEFORE R1 DT.18.4.2000.

P4: PHOTOCOPY OF JUDGMENT IN O.P. 21353/2002 DT.30.7.02 BY THIS HON'BLE COURT.

P5: PHOTOCOPY OF NOTICE ISSUED BY R1 TO PETITIOENRS DT.1.10.2002.

P6: PHOTOCOPY OF DEMAND NOTICE DT.26.12.2002 ISSUED BY R1 TO 1ST PETITIONER.

P7: PHOTOCOPY OF PETITION SUBMITTED BY EXECUTIVE ENGINEER BEFORE OMBUDSMAN DT.11.9.2001.

P8: PHOTOCOPY OF RELEVANT PAGE (NO.21) OF THE BOOK VAKKOM GRAMA PANCHAYAT FIVE YEAR PLAN (2002-2003).

P9: TRUE COPY OF TENDER NOTICE DT.14.10.2004.

P10: TRUE COPY OF NOTICE DT.20.11.2004.

RESPONDENT'S EXHIBITS:

R1(a): TRUE COPY OF ORDER DT.17.72003.

R1(b): TRUE COPY OF AFFIDAVIT AND APPLICATION FILED BY PETITIONERS BEFORE THE MUNSIFF COURT, VARKALA.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.3017 of 2003

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Dated this the 30th day of March, 2007.

JUDGMENT

The petitioners as Convenor and Chairman of beneficiary committee received rupees one lakh as mobilisation advance for construction of drainage canal for the Vakkom Grama Panchayat. Counsel for the Panchayat pointed out that the petitioners took up the same matter before the Munsiff Court and Ombudsman. While suit filed in civil court was withdrawn by the petitioners, Ombudsman dismissed the application with a cost of Rs.5,000/- as it found petitioners' petition frivolous. Counsel for the petitioners contended that petitioners have done some work and mobilised some materials which were not valued and paid for by the Panchayat. However, counsel for the Panchayat submitted that petitioners did not do any work or supplied any material and all what was done was digging the canal and putting the soil on the road blocking it, which was stated to be rectified by the public. Admittedly petitioners have not carried out the work for which advance was given and Panchayat had to get the work done by others after re-arranging it. In the circumstances, Panchayat is entitled to recover the advance paid to the petitioner. Therefore, challenge against

demand and recovery of the amount advanced to the petitioner is not tenable and hence rejected. However, I feel petitioners can be granted complete waiver of interest and payment of cost ordered by the Ombudsman provided petitioners clear the arrears advanced by the Panchayat within a period of two months from now i.e. on or before 31.5.2007. I make it clear that the waiver of interest and cost ordered by Ombudsman is granted only on condition of payment as above and in the event of failure, the waiver granted herein will stand automatically vacated and respondents will be free to proceed for recovery of arrears and cost with interest and collection charges under the Revenue Recovery Rules.

C.N.RAMACHANDRAN NAIR
Judge

pms